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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/582,623	07/21/2000	Rene Chiocca	193618US3XPC	2666

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ARLINGTON, VA 22202

EXAMINER

BEHREND, HARVEY E

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 01/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.



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DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☐ This application has been examined ☒ Responsive to communication filed on 10/15/01 ☒ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|---|---|
| 1. <input checked="" type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input type="checkbox"/> Notice of Draftsman's Patent Drawing Review, PTO-948. |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449 | 4. <input type="checkbox"/> Notice of Informal Patent Application, PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____ |

Part II SUMMARY OF ACTION

1. ☒ Claims 17-30, 32 are pending in the application.

Of the above, claims 22-30 are withdrawn from consideration.

2. ☐ Claims _____ have been cancelled.

3. ☐ Claims _____ are allowed.

4. ☒ Claims 17-21, 32 are rejected.

5. ☐ Claims _____ are objected to.

6. ☐ Claims _____ are subject to restriction or election requirement.

7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. ☐ Formal drawings are required in response to this Office action.

9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are: ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).

10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).

11. ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).

12. ☒ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy, translation has ☒ been received ☐ not been received
☐ been filed in parent application, serial no. _____; filed on _____

13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. ☐ Other

EXAMINER'S ACTION

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1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the features of a transport container comprised of a plurality of transport devices as set forth in claim 32 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 32 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no proper support in the original disclosure for a transport container comprised of a plurality of transport devices as set forth in claim 32.

4. Claims 32 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. There is no adequate description nor enabling disclosure of a transport container comprised of a plurality of transport devices as set forth in claim 32.

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There is no adequate description nor enabling disclosure of how and in what manner, the transport devices are maintained in a desired position with respect to each other and to the container, so as to prevent damage to the fuel elements.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. Claims 17-21, 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Knight.

Knight is the U.S. equivalent of Japan 1082196.

Applicants arguments are unpersuasive because the reference shows the actual claimed structure.

Note that the term "fixed walls" read on the concrete walls themselves or the metallic liners 16 thereof.

It is noted that the claims do not refer to a "structure", which is "rigidly attached" to one of the walls by means of welds, screws, bolts, etc.

In the reference, structure such as load pads 40 are considered as being "rigidly attached" to the wall by means of the pressure from the jack screw means (clearly, the load pads 40 are not free to move around at will).

It is noted that applicants claims are directed to an apparatus per se.

It is immaterial to the apparatus as to what length fuel assemblies are placed therein.

Note that the apparatus of the reference is inherently capable of being used with fuel assemblies having substantially the same length as the height of the walls.

It is only necessary that this capability be present.

It is well settled case law that limitations or statements of intended use or desired use, do not serve to patentably distinguish the claimed structure over that of the reference. See In re Pearson, 181 USPQ 641; In re Yanush, 177 USPQ 705; In re

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Finsterwalder, 168 USPQ 530; In re Casey, 152 USPQ 235; In re Otto, 136 USPQ 458;
Ex parte Masham, 2 USPQ 2nd 1647.

See MPEP 2114 which states:

A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ2d 1647.

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than functions. In re Danly, 120 USPQ 528, 531.

Apparatus claims cover what a device is, not what a device does. Hewlett-Packard Co. v. Bausch & Lomb., 15 USPQ2d 1525, 1528.

As set forth in MPEP 2115, a recitation in a claim to the material or article worked upon, does not serve to limit an apparatus claim.

8. Claims 17-21, 32 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by any of Jabsen, Koch et al, Junkermann et al, Waymire et al or Thorel et al.
9. The other references cited further illustrate pertinent art.
10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harvey Behrend whose telephone number is 703-305-1831. The examiner can normally be reached on Tuesday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 703-306-4198. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Behrend/cw
January 11, 2002

A handwritten signature in black ink, appearing to read 'H. Behrend', with a large, stylized circular flourish at the end.

**HARVEY E. BEHREND
PRIMARY EXAMINER**